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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANZ A. WAKEFIELD,

Plaintiff - Appellant,

v.

THE WALT DISNEY COMPANY; et al.,

Defendants - Appellees.

No. 07-56044

D.C. No. CV-05-06857-VBF

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted March 18, 2009^{**}

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Franz A. Wakefield appeals pro se from the district court's summary judgment in favor of defendants in his copyright infringement action based on

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

defendants' production of the *Kingdom Hearts* video game. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the grant of summary judgment, *Frybarger v. Int'l Bus. Machs. Corp.*, 812 F.2d 525, 528 (9th Cir. 1987), and for abuse of discretion rulings concerning discovery, *Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1009 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Wakefield failed to raise a genuine issue of material fact as to whether defendants had access to his copyrighted works prior to the completion of the relevant portions of *Kingdom Hearts*. See *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1128 (9th Cir. 2002) (“[A]s a matter of copyright law, it is well established that a prior-created work cannot infringe on a later-created one.”). Moreover, Wakefield failed to establish substantial similarity between his copyrighted works and *Kingdom Hearts*. See *Frybarger*, 812 F.2d at 530 (concluding that there was no copyright infringement where two video games had similar features because the similar features were nonprotectable ideas).

The district court did not abuse its discretion by denying Wakefield's discovery requests because the district court's reasons for its decisions are supported by the record. See *Childress*, 357 F.3d at 1009-10.

AFFIRMED.